



MEETING MINUTES

MILPITAS PLANNING COMMISSION Milpitas City Hall, Council Chambers 455 E. Calaveras Blvd., Milpitas, CA

Wednesday, September 26, 2018

I. PLEDGE OF ALLEGIANCE

Chair Mandal called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

Present: Chair Mandal, Commissioners Chua, Mohsin, Morris

Absent: Vice Chair Ciardella (excused), Commissioner Maglalang (excused), Commissioner Sandhu (unexcused)

II. ROLL CALL/ SEATING OF ALTERNATE

Staff: Ned Thomas, Jessica Garner, Heather Lee, Adrienne Smith, Elizabeth Medina

III. PUBLIC FORUM

Chair Mandal invited members of the audience to address the commission and there were no speakers.

IV. APPROVAL OF MEETING MINUTES

Approval of the August 8th and August 22nd meeting minutes will need to be put over and approved at a future meeting. *Discussed in Announcements.

Chair Mandal called for approval of the meeting minutes of the Planning Commission.

V. ANNOUNCEMENTS

Planning Director Ned Thomas introduced himself and briefly spoke about updates that are currently happening within the Planning Department.

- General Plan Update & dates of GPAC upcoming meetings
- Midtown Specific Plan
- Recent attendance to Sunnyhills Tenant Association meeting
- Pines Parking Study results shared with residents
- Upcoming Prefab ADU Showcase on 9/28/18 that Commissioners are encouraged to attend
- Dates of upcoming City Council Meetings that will be discussing: 1380-1400 South Main Street project, proposed digital billboard, report on cannabis related activities, Planning Commission compensation, report on ADUs
- Special Joint Meeting with City Council & Planning Commission on 10/23/18; Study Session on General Plan and Midtown Specific Plan.

Chair Mandal welcomed Ned Thomas to the City and Planning Commission. Mr. Mandal also mentioned he will not be present for the next couple of meetings therefore that Vice Chair will be there in his place.

Commissioner Chua noted that she was not present at the August 8th and August 22nd Planning Commission meetings so she will be unable to vote on the approval minutes. Mr. Mandal consulted with Deputy City Attorney, Heather Lee. Ms. Lee said the August 8th and August 22nd minutes will have to be put over and approved at a future Planning Commission meeting.

VI. CONFLICT OF INTEREST

Deputy City Attorney Heather Lee asked if any member of the Commission had any personal or financial conflict of interest related to any of the items on the agenda.

There were no reported conflicts.

VII. APPROVAL OF AGENDA

Chair Mandal asked if staff or Commissioners had changes to the agenda and there were none.

Motion to approve the September 26, 2018 agenda as submitted.

Motion/Second: Commissioner Chua/Commissioner Mohsin

AYES: 4

NOES: 0

IX. PUBLIC HEARING

IX-1 1831 TAROB COURT, APPEAL OF GEORGE QUINN OF A DETERMINATION BY THE CITY OF MILPITAS PLANNING DIRECTOR REGARDING INTERPRETATION OF CITY'S LEGAL NONCONFORMING USE REGULATIONS. The Planning Commission of the City of Milpitas shall conduct a public hearing and upon conclusion consider adoption of a resolution denying the appeal and thus upholding the Planning Director's decision regarding replacement of a previous discontinued nonconforming use. The proposed action is exempt from CEQA review pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a) (projects which are disapproved). Project Planner: Adrienne Smith (408) 586-3287, asmith@ci.milpitas.ca.gov.

Project Planner Adrienne Smith showed a presentation and discussed the property background, history and appeal.

Chair Mandal opened the public hearing.

Commissioner Morris asked if the property was unused in a timespan of less than one year. Ms. Smith clarified that the property had been vacant over one year of industrial use. Ms. Morris asked when it was leased to Stratford Schools, if that was for industrial use. Ms. Smith reminded Ms. Morris that the appeal did not include the storage use of Stratford at all; the Appellant's argument was that in making repairs and doing maintenance to the building they are demonstrating that they are continuing industrial use. Ms. Morris also inquired if informing the City of their building repair is a requirement. Ms. Smith said Appellant was not obligated to inform the City. Ms. Morris also asked Ms. Smith if the City changed the intent of land use. Ms. Smith reminded Ms. Morris that it is apart of the TASP that was

adopted in 2008, a Plan that had extensive public consultation before zoning was approved.

Commissioner Chua asked what was the City's way of communicating the TASP implementation, rezoning from industrial to R4. Ms. Smith noted that current Staff was not present at the time of implementation (2008), but from what she understands is there was extensive public consultation and notification before zoning was approved and the Appellant was well aware since 2008. Ms. Chua inquired if the General Plan will impact this case of non-conforming to conforming use. Mr. Thomas spoke to say that the General Plan Update does not touch up on the MidTown Specific Plan or the TASP since they are relatively new and land uses are in place.

Chair Mandal asked if the property is currently zoned at R4, very high density. Ms. Smith noted that is correct. Mr. Mandal asked what it was previously zoned as. Ms. Smith said it was as industrial, M1 industrial and noted this is one of many properties that have been rezoned at that time. Mr. Mandal asked if there are other surrounding properties in the area that are impacted similarly. Mr. Mandal also clarified the zoning of the current properties in the area. Ms. Smith noted they are all R3, R4 and there are no M1 properties in the area now.

Commissioner Chua inquired about the improvements the property owners made and if permits were needed prior to work being done. Ms. Chua feels like the City missed something; Ms. Chua feels that if the City were requiring a conforming use of the building, why issue permits to allow the Appellant to perform repairs and maintenance. Ms. Chua said the City would have not approved the building permits if the property is now of non-conforming use. Ms. Smith exclaimed that by obtaining a CUP for a school, it is an R4 acceptable use, as long as they can achieve planning entitlement. Ms. Smith also mentioned that she believes after Stratford reviewed some of the CEQA requirements that they would need to go through, Stratford withdrew their application.

Commissioner Mohsin asked if the Appellant currently has someone interested their building for industrial use. Ms. Smith said the Appellant had or may have an interested party, an electric car manufacturer. Ms. Smith is unsure if they still want to lease.

Chair Mandal invites Appellant to podium.

Appellant George Quinn, partner with GeoMax, an industrial real estate development and management company, expressed he is very concerned and anxious for the success and economic viability of the City. He stated he is not trying to hurt the City of Milpitas. Mr. Quinn shared history of the property he bought 41 years ago and discussed on how the property was rezoned residential 10 years ago. Mr. Quinn argued that the property is not residential.

Andy Faber, Land Use Attorney representing George Quinn presented a packet of information that describe issues that were brought up by current Planning Staff. Packet included the appeal, maps, purchase agreements, "For Lease" advertisements, lease proposals, summary of costs and expenses, building permits, photos of property, summary of ongoing costs, etc. Mr. Faber asked for Planning Commission to grant appeal.

Commissioner Mohsin asked if improvements were communicated with the City.

Mr. Quinn said they communicated with the City having to obtain permits and approvals. Ms. Mohsin inquired if the City knew the property was being fixed and rented out for industrial use. Mr. Quinn said the Building Department knew, not sure if the Planning Department knew. Mr. Quinn said they approached the Planning Department several times when they brought in tenants. George Quinn III introduced himself to Planning Commission. He spoke of the times he had to communicate with the Planning Staff in regards to the tenants interested in the property and other dialog regarding the Stratford School occupancy. Mr. Quinn III noted how the property was designed for an industrial machine shop. Mr. Faber presented the Commission with a permit that was approved by Planning to show that Planning was involved.

Commissioner Mohsin asked Planning Director, Ned Thomas if someone informed the Appellant of the City's Plan of streets and the park development. Mr. Thomas clarified the "use" of the building and the building itself. Mr. Thomas said that improvements made to the building go through the Building; not necessarily through Planning as Planning does not go through every permit. Mr. Thomas also noted that potential uses of the property are discussed with Planning, then is when the Planning Department looks at the use through the lens of the TASP and the Zoning Ordinance. Mr. Thomas notes that the TASP is a dually adopted Plan/Policy of the City of Milpitas and Staff's responsibility is to implement the Plan and Mr. Thomas also cleared up "Use" vs "Nonconforming Use".

Mr. Faber exclaimed that the City has not implemented the TASP, has not been implemented the park and the road that affect this particular property.

Commissioner Chua requested that Ms. Smith return to podium to showcase the summary of Staff's arguments in response to the appeal. Ms. Chua inquired on some of the bullet points. Ms. Smith explained Staff's interpretations of mentioned items.

Mr. Thomas again clarified occupancy and use; and, use vs non-conforming use through the City's Zoning Ordinance.

Mr. Faber gave his definition of use and non-comforming use.

Chair Mandal asked if Appellant has a tenant in the building now. Mr. Laber said the Appellant does not have a tenant and that property has been vacant since January 2017. Mr. Mandal asked about the money that was spent to upgrade/upkeep building. Mr. Laber lets Mr. Mandal know that the company, Nio is interested in leasing the building. Mr. Mandal asked if there is a signed lease. Mr. Quinn said that the Planning Staff told Nio they could not move in; however, Nio is still interested in leasing the building.

Commissioner Morris asked who put the property on the market and if the City was aware of it. Mr. Quinn III shared details of the lease listings and marketing of the building. Mr. Quinn III said that Planning was aware of leasing listings and of the prospective tenants knowing it would have be cleared by Planning. Ms. Morris inquired if they have someone interested in occupying the building now. Mr. Quinn III noted that correct and that a 5-year lease was prepared with no option to extend.

Chair Mandal asked Ms. Smith questions about property location and it's surrounding parcels.

Commissioner Morris asked Mr. Thomas if the Planning Commission is recommending this item to City Council or is it going no further than the Planning Commission. Mr. Thomas noted that this is an appeal made by Staff, brought to the Commission first; however, City Council makes the final decision. Mr. Thomas also added that the Zoning must be consistent with the underlying Plan (TASP).

Chair Mandal asked Mr. Thomas what would be in this surrounding area based on TASP. Mr. Thomas said that the TASP, it's long range plan, is primarily for residential for this specific location. Mr. Thomas also reminded Commissioners that the Appellant's building has been vacant for over one year, and rules through non-conforming use give the property owners one year to occupy the building with another industrial use tenant.

Commissioner Morris asked for Appellant to return to podium to share his argument. Mr. Laber said that Ms. Thomas and Staff are confusing vacancy with use. Mr. Laber also noted they have been continually trying to get industrial tenants but it takes time.

Commissioner Chua thanked Quinn Family for being a contributing member of the City of Milpitas for a long time.

Chair Mandal opened the public hearing and there were no speakers.

Motion to close the public hearing.

Motion/Second: Commissioner Mohsin/Commissioner Chua

AYES: 4

NOES: 0

Chair Mandal said that although property owners have spent a lot of money to improve and market the property for industrial use; in his perspective we need to look at the TASP, as a long term plan. Mr. Mandal would like to stick to the plan, the TASP plan and future proposed land use of Milpitas.

Commissioner Morris said she doesn't feel it will impact the plan as the lease agreement is for 5-years, no option to renew and the City can bring in revenue.

Commissioner Chua agreed with Ms. Morris.

Motion to deny Resolution No. 18-017 and overturn the determination by Planning Department staff and uphold the appeal based on findings that the nonconforming industrial use at the subject property had been discontinued for a continuous period of more than one year, and in accordance with City of Milpitas Municipal Code Section XI-10-56.03(A), cannot be replaced with a different nonconforming industrial use.

Motion/Second: Commissioner Chua/Commissioner Morris

AYES: 3

Abstain: 0

NOES: 1

X. NEW BUSINESS
NO ITEMS

XI. ADJOURNMENT The meeting was adjourned at 8:47 PM.

Motion to adjourn to the next meeting.

Motion/Second: Commissioner Morris/Commissioner Mohsin

AYES: 4

NOES: 0

*Meeting Minutes submitted by
Planning Commission Secretary Elizabeth Medina*